

AMENDED IN ASSEMBLY APRIL 4, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 358

Introduced by Assembly Member Smyth

February 10, 2011

An act to amend Section ~~25296.30~~ 25296.25 of the Health and Safety Code, relating to hazardous substances.

LEGISLATIVE COUNSEL'S DIGEST

AB 358, as amended, Smyth. Hazardous substances: underground storage ~~tanks~~; *tanks: corrective action suspension*.

Existing law generally regulates the storage of hazardous substances in underground storage tanks, including requiring underground storage tanks that are used to store hazardous substances to meet certain requirements. ~~Existing law requires the State Water Resources Control, in consultation with the former State Department of Health Services, to develop guidelines for the investigation and cleanup of methyl tertiary-butyl ether (MTBE) and other ether-based oxygenates in groundwater, with regard to these tanks.~~

Existing law requires owners and operators of underground storage tanks to take corrective action to an unauthorized release. The State Water Resources Control Board is authorized to suspend corrective action at a site, unless the board, in consultation with local agencies and the California regional water quality control board (regional board), determines that a site is an emergency site, as defined. The board is prohibited from suspending certain activities pursuant to that authority and is required to continue the suspension under certain conditions. The board is required to adopt regulations to specify the conditions under which a site is an emergency site, in that it poses either

an imminent threat to public health or safety or to the environment or a substantial probability of causing a condition of contamination, nuisance, or pollution.

Under the existing Barry Keene Underground Storage Tank Cleanup Trust Fund Act of 1989, the board is authorized to expend moneys from the Underground Storage Tank Cleanup Fund to pay claims to aid eligible owners and operators of petroleum underground storage tanks who take corrective action to clean up unauthorized releases from those tanks.

This bill would ~~update an obsolete reference and instead require consultation with the State Department of Public Health~~ instead authorize the board to suspend corrective action if reimbursement of a claim has been suspended pursuant to the act, unless the board determines, without the requirement to consult with local agencies and the regional board, that the site presents an imminent threat to public health or safety or to the environment. The bill would delete the prohibition on the board from suspending those activities, would revise the conditions under which suspension is required to be continued, and would delete the requirement that the board adopt regulations to specify the conditions under which a site is an emergency site.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 25296.25 of the Health and Safety Code*
 2 *is amended to read:*
 3 25296.25. (a) ~~(1) Unless the board, in consultation with local~~
 4 ~~agencies and the regional board, determines that a site is an~~
 5 ~~emergency site, the board,~~ *The board may suspend additional*
 6 ~~corrective action or investigation work at a site, at the request of~~
 7 ~~a responsible party who is eligible for reimbursement of corrective~~
 8 ~~action costs under Chapter 6.75 (commencing with Section~~
 9 ~~25299.10), may suspend additional corrective action or~~
 10 ~~investigation work at a site, based on a preliminary site assessment~~
 11 ~~conducted in accordance with the corrective action regulations~~
 12 ~~adopted by the board, but the board shall not suspend any of the~~
 13 ~~following activities pursuant to this section: if reimbursement of~~
 14 ~~a claim has been suspended pursuant to Chapter 6.75 (commencing~~
 15 ~~with Section 25299.10), unless the board determines that the site~~

1 *presents an imminent threat to public health or safety or to the*
2 *environment, based on a preliminary site assessment conducted*
3 *in accordance with the corrective action regulations adopted by*
4 *the board pursuant to subdivision (a) of Section 25296.10.*

5 ~~(A) Removal of, or approved modifications of, existing tanks.~~

6 ~~(B) Excavation of petroleum saturated soil or removal of excess~~
7 ~~petroleum from saturated soil.~~

8 ~~(C) Removal of free product from the saturated and unsaturated~~
9 ~~zones.~~

10 ~~(D) Periodic monitoring to ensure that released petroleum is~~
11 ~~not migrating in an uncontrolled manner that will cause the site to~~
12 ~~become an emergency site.~~

13 ~~(2) For purposes of this subdivision, "emergency site" means~~
14 ~~a site that, because of an unauthorized release of petroleum, meets~~
15 ~~one of the following conditions:~~

16 ~~(A) The site presents an imminent threat to public health or~~
17 ~~safety or the environment.~~

18 ~~(B) The site poses a substantial probability of causing a~~
19 ~~condition of contamination or nuisance, as defined in Section~~
20 ~~13050 of the Water Code, or of causing pollution of a source of~~
21 ~~drinking water at a level that is a violation of a primary or~~
22 ~~secondary drinking water standard adopted by the State Department~~
23 ~~of Health Services pursuant to Chapter 4 (commencing with~~
24 ~~Section 116270) of Part 12 of Division 104.~~

25 (b) The suspension shall continue until one of the following
26 occurs:

27 (1) The board provides the eligible responsible party with *notice*
28 *that the suspension of funding is lifted and that reimbursement*
29 *payments are available pursuant to a letter of commitment issued*
30 *pursuant to Chapter 6.75 (commencing with Section 25299.10)*
31 *that the party will receive reimbursement for the corrective action.*

32 (2) The responsible party requests in writing that the suspension
33 be terminated and that the work continue.

34 (3) The fund established pursuant to Article 6 (commencing
35 with Section 25299.50) of Chapter 6.75 is no longer in existence.

36 ~~(e) The board shall adopt regulations pursuant to Section~~
37 ~~25299.3 that specify the conditions under which a site is an~~
38 ~~imminent threat to public health or safety or to the environment~~
39 ~~or poses a substantial probability of causing a condition of~~
40 ~~contamination, nuisance, or pollution as specified in paragraph (2)~~

1 of subdivision (a). The board shall not suspend corrective action
2 or investigation work at any site pursuant to this section until the
3 effective date of the regulations adopted by the board pursuant to
4 this subdivision.

5 SECTION 1. Section 25296.30 of the Health and Safety Code
6 is amended to read:

7 25296.30. (a) The board, in consultation with the State
8 Department of Public Health, shall develop guidelines for the
9 investigation and cleanup of methyl tertiary-butyl ether (MTBE)
10 and other ether-based oxygenates in groundwater. The guidelines
11 shall include procedures for determining, to the extent practicable,
12 whether the contamination associated with an unauthorized release
13 of MTBE is from the tank system prior to the system's most recent
14 upgrade or replacement or if the contamination is from an
15 unauthorized release from the current tank system.

16 (b) The board, in consultation with the State Department of
17 Public Health, shall develop appropriate cleanup standards for
18 contamination associated with a release of methyl tertiary-butyl
19 ether.